

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 842 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIMSINH CHHAGANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Petitioner

MR B.D.DESAI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/06/98

ORAL JUDGEMENT coram: Bhatt,.j.

The appellant who came to be convicted for the offence punishable under Section 302, I.P. Code by the learned Additional Sessions Judge, Bharuch by his judgment and order dated 25.10.1991 in Sessions case No. 116 of 1991 for killing his wife Shantaben with the help of a spear on 31.3.1991 at 2.30 p.m. at village Navadadapor, in his

house, has challenged the same by filing this appeal.

Upon charge sheet, after investigation, the charge came to be framed on 25.9.1991 in sessions case No. 116 of 1991 under section 302 ,I.P.Code and section 135 of the Bombay Police Act, in that, it was alleged that on the day of the incident, the appellant-accused demanded money from his wife Shantaben who refused to give which provoked and indignated the appellant as a result of which, there was quarrel which was followed by a spear blow on the clavicle portion of his wife which resulted in her death. Therefore, he was tried for the offence punishable under Section 302,IPC and also under section 135 of the Bombay Police Act.

In order to substantiate charges, the prosecution placed reliance on the evidence of the following persons:

1. Rajesh Gurudev Raj,ex. 9
2. Natversinh C.Rana,ex. 13
3. Udesing Mansingh,ex.15
4. Vithal Shah, ex. 16
5. Mansang Moti,ex. 17
6. Ambaben Raysing,ex, 18
7. Raman Chhotlal,ex.19
8. Jashwantpuri Zaverpuri,ex. 21.

The prosecution also placed reliance on the following documentary evidence to which reference will be made as and when required at appropriate stage.

1. Complaint,ex. 25
2. Inquest panchnama ex. 7
3. Panchnama,ex. 8
4. Post mortem note,ex. 12

Upon examination and assessment of evidence relied on by the prosecution, the trial court found the appellant accused guilty for the offence punishable under section302,I.P.Code and also under section 135, Bombay Police Act and he came to be awarded imprisonment for life under section 302,IPC. The trial court inter alia held :

- (i) that deceased Shantaben had sustained serious injury on her chest near clavicle bone with the help of spear and it was sufficient in the ordinary course of nature to cause death and as such, it had resulted in her death.After post mortem was performed,the cause of death was also made known;

- (ii) the complaint was lodged immediately;
- (iii) the sarpanch Udesingh Mansangh, P.W.No.3 examined at ex.15 was the eyed witness who had supported the prosecution case.
- (iv) that the P.W. 1-Rajeshkumar and P.W.2 Natvarsingh Rana had also supported the prosecution case.
- (v) that in course of evidence of the panchas, the spear produced by the accused before the police which was used in the commission of the crime was also proved.
- (vi) Ambaben, ex. 18, Raman Chhotalal, ex.19, Jashwant-bhai Zaverpuri, ex. 21 and Mrugesh Patel, ex.24 have also been examined and their evidence is considered. Some of the corroborative circumstances emerging from the evidence of the aforesaid witnesses have been relied on.

The ultimate conclusion of the trial court in holding the appellant accused guilty of offence under section 302 requires to be examined, as to whether there was case of murder as contemplated by provisions of section 302 or there was case of lesser offence. No doubt, the deceased wife of the appellant-accused was done away with by giving a spear blow by the accused on a vital part of the body. However, the prosecution has not been able to successfully show, beyond reasonable doubt, that the said blow was inflicted with a view to kill the deceased. In our opinion, there is no clear and cogent evidence to connect the accused with the complicity of offence made punishable under Section 302.

In our opinion, in the facts and circumstances, this is a case of conviction and punishment under section 304-II, IPC for causing homicidal death with knowledge without intention. That the offence of man-slaughter with knowledge that death is likely to entail would attract provisions of Section 304-II. This conclusion of ours is also very much reinforced by the following circumstances:

- (i) there was quarrel between the deceased wife and the accused husband which preceded;
- (ii) the accused, before the incident, demanded money from his wife and she refused to oblige him. Consequently, the accused got wild as a

result of which he inflicted a spear blow on the neck in clavicle portion ,all of a sudden out of excitement and without any intention to kill her.

Nonetheless, it can safely be presumed that infliction of spear blow on a vital organ would cause death and such knowledge can be attributed in the light of the evidence. Though we are unable to uphold the conviction under section 302 , it is required to be converted into conviction under section 304-II for homicidal death and killing of wife by the appellant-accused.

Now, the question would arise as to what should be the quantum of sentence when we have converted the offence from section 302 to 304-II, I.P.Code..The maximum punishment of sentence awardable to the appellant in such case is ten years. However, the accused has been in custody since March 1991 after he was found guilty. In the circumstances, it would be just and reasonable to award the sentence already undergone.

The appeal is partly allowed.

Therefore, the appellant shall be released forthwith if not required in any other case.

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